ZULKIFLI IBRAHIM v. DEWAN UNDANGAN NEGERI PULAU PINANG & ANOR

HIGH COURT MALAYA, PULAU PINANG
AZIZAN MD ARSHAD JC
[ORIGINATING SUMMONS NO: PA-24NCVC-707-10-2020]
2 MARCH 2023

Abstract – *The court has no power to interfere with the internal management of Parliament or any State Legislative Assembly. This immunity arises from the doctrine of separation of powers between the three principal organs of the Government, namely the Executive, the Legislative and the Judiciary and the court must always give recognition to this doctrine. If the three branches are left unchecked, a clash would ensue and destroy the doctrine of separation of powers which would affect the freedom of the three to act according to their respective jurisdiction.*

CIVIL PROCEDURE: *Injunction – Erinford injunction – Application by Assemblyman for Erinford injunction to prevent State Legislative Assembly from submitting, proposing, debating or voting on motions to vacate seat – Whether court seized with jurisdiction to issue Erinford injunction – Whether Erinford injunction necessary to maintain status quo of parties – Penang State Constitution, art. 14A*

CONSTITUTIONAL LAW: *Jurisdiction – Judiciary – Doctrine of separation of powers – Application by Assemblyman for Erinford injunction to prevent State Legislative Assembly from submitting, proposing, debating or voting on motions to vacate seat – Whether court seized with jurisdiction to issue Erinford injunction – Whether matter within exclusive jurisdiction of State Legislative Assembly – Whether court/Judiciary could grant injunction against Legislative which has effect of preventing Legislative from using powers and jurisdiction provided to them under laws – Penang State Constitution, art. 14A*

The plaintiff, the assemblyman for Sungai Acheh, Pulau Pinang, filed an originating summons, seeking a declaration that art. 14A of the Penang State Constitution ('PSC') was void under art. 4(1) of the Federal Constitution ('FC') due to its inconsistency with art. 10(c) of the FC ('encl. 1'). Enclosure 1 was dismissed and pending appeal, the plaintiff was informed by the State Legislative Assembly that a motion to declare the status of his seat would be tabled. In the present application, the plaintiff sought an *Erinford* injunction to prevent the first defendant from submitting, proposing, debating or voting on motions to vacate his seat under art. 14A of the PSC. The issues that arose for determination were: (i) whether the court was seized with the jurisdiction to issue the *Erinford* injunction; and (ii) whether the *Erinford* injunction was necessary to maintain the *status quo* of the parties.

Held (dismissing application without costs):

(1) The plaintiff's application was to prevent the jurisdiction of the defendants and would directly prevent them from exercising their legal powers which were expressly vested in their exclusive jurisdiction. The court could not make any decision that would exceed the jurisdiction of this court. Any issue related to the eligibility or disqualification of a member of the State Assembly, who had been elected through a valid election process, is under the jurisdiction of the State Legislative Assembly as stated in the State Constitution. The applicability of art. 14A of the PSC was within the exclusive jurisdiction of the defendants and could not be interfered with by the court. Even if the court could intervene, this could only be done and referred to the court after a decision is made by the defendant. In the present case, no decision had been made by the defendants. The court could not grant an injunction against the defendants which had the effect of preventing the defendants from using the powers and jurisdiction provided to them under the PSC. The plaintiff failed to show that the *Erinford* injunction ought to be granted. (paras 26, 27 & 43)

(2) For issues relating to *status quo*, the plaintiff was still an assemblyman until the decision was made by the defendant. Until the motion was made, debated and voted (approved and passed), his qualification and position were not affected. The issue of loss of membership would only exist after that process. The court could only consider the issue for the *status quo* of the plaintiff to be maintained or reinstated only if there is a decision that the *status quo* of the plaintiff had changed or had been removed. (para 35)

Case(s) referred to:

Fan Yew Teng v. Government Of Malaysia [1976] 1 LNS 28 HC ***(refd)***

Haris Fathillah Mohd Ibrahim v. Suruhanjaya Pilihanraya Malaysia [2016] 10 CLJ 382 HC ***(refd)***

Kebabangan Petroleum Operating Company Sdn Bhd v. Mikuni (M) Sdn Bhd & Ors [2021] 7 CLJ 544 CA ***(refd)***

M Kula Segaran & Satu Lagi lwn. Suruhanjaya Pilihan Raya Malaysia & Yang Lain [2018] 5 CLJ 547 CA ***(refd)***

Pengusaha, Tempat Tahanan Perlindungan Kamunting, Taiping & Ors v. Badrul Zaman PS Md Zakariah [2018] 8 CLJ 273 FC ***(refd)***

Pilecon Engineering Bhd v. Malayan Banking Bhd & Ors [2012] 3 MLJ 100 ***(refd)***

R v. Sir RF Graham-Campbell ex parte Herbet [1935] 1 KB 594 ***(refd)***

Sakapp Commodities (M) Sdn Bhd v. Cecil Abraham [1998] 4 CLJ 812 CA ***(refd)***

Sivakumar Varatharaju Naidu v. Ganesan Retanam [2009] 1 LNS 979 HC ***(refd)***

Subashini Rajasingam v. Saravanan Thangathoray & Other Appeals [2008] 2 CLJ 1 FC ***(refd)***

Suruhanjaya Pilihan Raya & Ors v. Kerajaan Negeri Selangor [2018] 1 LNS 209 CA ***(refd)***

Syed Iskandar Syed Jaafar v. Kerajaan Malaysia & Ors [2023] 1 CLJ 642 HC ***(refd)***

Teng Chang Khim v. Badrul Hisham Abdullah & Anor [2017] 9 CLJ 630 FC ***(refd)***

The Speaker Of Dewan Undangan Negeri Of Sarawak Datuk Amar Mohamad Asfia Awang Nassar v. Ting Tiong Choon & Ors And Other Appeals [2020] 3 CLJ 757 FC ***(refd)***
Tun Datu Hj Mustapha Datu Harun v. Legislative Assembly Of State Of Sabah [1985] 1 LNS 150 HC ***(refd)***
Tun Datu Hj Mustapha Datu Harun v. Tun Datuk Hj Mohamed Adnan Robert, Yang Di-Pertua Negeri Sabah & Datuk Joseph Pairin Kitingan [1986] 2 MLJ 391 ***(refd)***
Tun Dr Mahathir Mohamad & Ors v. Datuk Azhar Azizan Harun & Ors [2021] 3 CLJ 852 HC ***(refd)***

Legislation referred to:
Federal Constitution, arts. 4(1), 121(1A)
Penang State Constitution, arts. 13, 14A

Other source(s) referred to:
SA de Smith, *Judicial Review of Administrative Action*, 3rd edn, p 418

For the applicant - DP Naban, Rosli Dahlan, Chetan Jethwani, Hafiz Hood & Thenesh Anbalagan (PDK); M/s Chetan Jethwani & Company
For the applicant - Malik Imtiaz, Surendra Ananth, Khoo Suk Chyi & Wong Ming Yen; M/s Surendra Ananth

Reported by Najib Tamby

JUDGMENT
(encl. 90)

Azizan Md Arshad JC:

Introduction

[1] This is an appeal against the decision of this court in dismissing the plaintiff's application for an *Erinford* injunction to prevent the defendants from taking action to vacate his seat based on art. 14A of the Penang State Constitution ("PSC").

[2] This court, after hearing the arguments of both learned counsels has dismissed encl. 90 without costs on 2 March 2023. The parties will be referred to as they were in the High Court.

Brief Facts

[3] The plaintiff (ADUN for Sungai Acheh) filed the encl. 1 in order to obtain a declaration that art. 14A of the PSC is void under art. 4(1) of the Federal Constitution due to its inconsistency with art. 10(c) of the FC. The plaintiff was a member of Parti Keadilan Rakyat ("PKR"). He was expelled from PKR in or around June 2020.

[4] On 12 January 2023, this court dismissed the OS on the primary basis that the primary cause of action relating to the constitutionality of art. 14A of the PSC was decided by the Federal Court.

[5] The Federal Court further held that the applicability of art. 14A of the PSC to the plaintiff was to be determined by the first defendant in accordance with the separation of powers doctrine.

[6] The plaintiff had appealed against that decision. While waiting for the cases to be disposed of by the Court of Appeal (COA), he was informed by the State Legislative Assembly that a motion to declare the status of his seat will be tabled on 6 March 2023.

[7] This is the plaintiff's application for an *Erinford* injunction for the Originating Summons No: PA-24NCvC-707-10/2020. The plaintiff has filed *Erinford* injunction to seek an order preventing the first defendant from submitting, proposing, debating or voting on motions to vacate their seats under art. 14A of the PSC

(There are two more similar applications in two different originating summons).

Issues

First

Whether this court has jurisdiction to issue the *Erinford* injunction; and

Second

Whether "the *Erinford* injunction is necessary to maintain the *status quo* of the parties."

Plaintiff's Brief Arguments

First Issue

[8] This honourable court has the jurisdiction to grant an injunction pending an appeal against this Honourable Court's dismissal of the originating summons ("OS").

[9] One of the substantive reliefs sought by the plaintiff in the originating summons is injunctive in nature, which seeks to prevent the defendants from tabling, proposing, debating, voting upon and/or passing any motion pursuant to art. 14A of the PSC purporting to vacate the plaintiff's seat as State Assemblyman. In this application, the plaintiff applies for an *Erinford* injunction pending the final hearing and disposal of the appeals in the Court of Appeal.

[10] It is trite law that an *Erinford* injunction can be granted by this honourable court despite its decisions being appealed by the plaintiff. In fact, the case of *Subashini Rajasingam v. Saravanan Thangathoray* [2007] 7 CLJ 584; [2007] 2 MLJ 798 ("*Subashini*") shares some factual similarities with our current situation. In *Subashini*, the High Court held that it did not have jurisdiction to grant the substantive injunction against the Syariah Court's decision as it is expressly provided under art. 121(1A) of the Federal Constitution that the civil courts shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts. Nevertheless, the High

Court granted an *Erinford* injunction to the plaintiff pending the plaintiff's appeal to the appellate court. Subsequently, the Federal Court reaffirmed the High Court's decision that, an *Erinford* injunction can be granted by the High Court that had already dismissed the substantive injunctive relief based on the reason that it had no jurisdiction to grant the substantive injunction:

> [28] The learned judicial commissioner in granting the *Erinford* injunction was of the view that on the balance of convenience it was desirable that the *status quo* of the parties be maintained pending appeal to the Court of Appeal to prevent the appeal from being rendered nugatory. In my judgment, the High Court was right. The High Court was entitled to grant an *Erinford* Injunction even though it had held that it had no jurisdiction to grant the substantive interim injunction.

[11] Therefore, applying the same reasoning to our case, even though this honourable court had previously dismissed both the plaintiff's amendment application and the originating summons based on the reason of want of jurisdiction, this honourable court is still equipped with jurisdiction to grant an *Erinford* injunction to preserve the parties' *status quo*.

[12] The defendants should not be allowed to put forward a jurisdiction argument at the eve of decision date. If the defendants were to put forward a jurisdictional argument, it should have been raised at the start of the proceedings, *ie*, as a preliminary argument. Failing which, the defendants have effectively waived their right to raise the jurisdictional argument. (In *Kebabangan Petroleum Operating Company Sdn Bhd v. Mikuni (M) Sdn Bhd & Ors* [2021] 7 CLJ 544; [2021] 1 MLJ 693)

Second Issue

[13] Even though this honourable court had previously dismissed both the plaintiff's amendment application and the originating summonses based on the reason of want of jurisdiction, this Honourable Court is still equipped with jurisdiction to grant an *Erinford* injunction to preserve the parties' *status quo*.

[14] If this injunction is not granted and the plaintiff loses his seat as assemblyman for his respective constituent, the effect and consequences will be irreversible. This will further render the decision of the Court of Appeal in the pending appeals to be nugatory.

[15] The injunction sought was not a permanent one but to be in place only until the disposal of the Court of Appeal's decision or the dissolution of the PSLA, whichever is sooner. Therefore, the defendants would not have any candidate being withheld from serving the relevant constituent. In fact, the defendants will benefit if the constituents are served by the plaintiff until the dissolution of the Penang State Legal Assembly ("PSLA"), instead of having the seat left vacant until the next Penang state election is held.

A **Defendants' Brief Arguments**

First Issue

[16] It is settled that this court cannot grant orders which would have the effect of restraining the first defendant from carrying out its business, which
B includes the tabling and passing of any motion.

[17] To support this argument the defendants have referred to the Federal Court in *Teng Chang Khim v. Badrul Hisham Abdullah & Anor* [2017] 9 CLJ 630; [2017] 5 MLJ 567, where Raus Sharif PCA said:

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> [37] Therefore, we are of view that the speaker in the present case had acted legally under art. 69 of the Selangor Constitution in declaring Badrul's N46 Pelabuhan Klang Constituency seat vacant. The course taken by the speaker is non-justiciable as it is protected by art. 72(1) of the Federal Constitution and paras. 2-3 of the Schedule to art. 77 of the Selangor Constitution.

D **[18]** The defendants further argue that this also applies to injunctive orders and they referred to the case of *Tun Datu Hj Mustapha Datu Harun v. Legislative Assembly Of State Of Sabah* [1985] 1 LNS 150; [1986] 2 MLJ 388, where the plaintiff applied for an interim injunction to restrain the sitting of the Sabah State Legislative Assembly. The court found that it had no
E jurisdiction to make such an order. Abu Mansor J said, at p. 390:

> Then art. 72(1) of the Federal Constitution provides that the validity of any proceedings in the Legislative Assembly of any State shall not be questioned in any court. The parallel of the present application is to be found in the case of *Fan Yew Teng v. Government of Malaysia* [1976] 2 MLJ
F 262 264 where the applicant therein applied that the Dewan Rakyat desist from discussing his disqualification as a Member of the House. The learned Judge, Chang Min Tat J (as he then was), quoted with approval S.A. de Smith in his "*Judicial Review of Administrative Action*" (3rd Edition) at page 418 where the learned author has this to say:
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G > The courts have no jurisdiction to restrain by injunction, or otherwise to pass upon, any conduct that forms part of proceedings in Parliament, even though the matter in issue is not directly connected with the process of legislation. In the well-known case of *Bradlaugh v. Gossett* (1884) 21 QBD 271, the court refused to award the plaintiff an injunction against the Serjeant-at Arms to
H > restrain him from enforcing an order of the House of Commons requiring him to exclude the plaintiff from the House, or a declaration that the order of the House was void. Assuming that the plaintiff was right in his contention that the order of the House was based upon the misconstruction of a statute, nevertheless the courts had no jurisdiction to interfere, for the matter fell
I > exclusively within the scope of the privilege of the House to regulate its own internal proceedings.

[19] Learned defendants' counsel also argued that the case cited by learned plaintiff's counsel – *McDonald v. Cain*'s case – itself throws some light on the question of jurisdiction where at p. 419, Gavan Duffy J, after disagreeing with learned Solicitor-General's submission therein that the court had no jurisdiction, remarked:

> There is no doubt that the courts will not interfere with the Council's management of its business within the four walls of Parliament even if it appears that some legal right has been interfered with.

Then again at p. 436 therein FC O'Bryan J said:

> The Solicitor-General then relied upon *Bradlaugh v. Gossett* (1884) 21 QBD 271, and what was said by Lord Coleridge CJ, at pp. 272-3, and by Stephen J, at pp. 276-7. But in that case what was sought by the plaintiff was an order to declare that what had been done in the House itself ... This was held to be an invocation of the courts of law to control the House of Commons in its internal procedure and proceedings – a thing which is plainly outside their jurisdiction. It is ancient and well-established law that what is said and done within the walls of Parliament cannot be inquired into in a court of law.

Further at p. 437 of this *McDonald v. Cain*'s case the same learned judge referred to *R v. Sir RF Graham-Campbell ex parte Herbet* [1935] 1 KB 594 in which an attempt was made to invoke a judicial inquiry in the Court of the King's Bench into the legality of the supply of intoxicating liquor in the House of Commons. The attempt failed because it was an attempt to control the House of Commons in a matter in which it has the privilege of regulating being a matter of its own internal affairs and procedure. No court of law has jurisdiction to interfere in such matters.

> ...
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> In the exercise of my discretion whether to grant or refuse an interlocutory injunction I sought to find if there was anything in the plaintiff's application or submission where the plaintiff has satisfied me that I can grant it. On the contrary I find the authorities point one way that I have no such jurisdiction to grant and more coupled by the merits of the application the plaintiff has not shown me why I should grant it.

[20] The said decision was later reaffirmed in *Sivakumar Varatharaju Naidu v. Ganesan Retanam* [2009] 1 LNS 979; [2010] 7 MLJ 355, where Azahar Mohamed J (as he then was) said:

> It is well settled that the validity of any proceeding in the Legislative Assembly is not justiciable. The court has no jurisdiction to adjudicate upon the matter (see *Lim Cho Hock v Speaker, Perak State Legislative Assembly* [1979] 2 MLJ 85; *Tun Datu Haji Mustapha Bin Datu Harun v. Legislative Assembly of State of Sabah & Ors* [1986] 2 MLJ 388; *Fan Yew Teng v. Government of Malaysia [1976] 2 MLJ 262; and Bradlaugh Gossett* (1884) 12 QBD271).

[21] Given that art. 14A of the PSC has been determined to be constitutional by the Federal Court, the first defendant has a constitutional duty to have the motions tabled and debated. A grant of any injunctive order would undermine the doctrine of separation of powers. In *Tun Datu Hj Mustapha Datu Harun v. Tun Datuk Hj Mohamed Adnan Robert, Yang Di-Pertua Negeri Sabah & Datuk Joseph Pairin Kitingan* [1986] 2 MLJ 391, Abu Mansor J said, at p. 3936:

> Apart from the uncertainty of the event taking place for reason given in the application against the 2nd defendant even if advice is tendered to the 1st defendant to have the State Assembly dissolved other than under art. 7 of the State Constitution the 1st defendant is vested with a discretion to order dissolution or not under art. 21(2) read with art. 10(2) thereof. Where the Constitution itself had invested the 1st defendant with that discretion the court held that it was extremely improper that it should interfere by means of an injunction. Such an injunction would certainly run counter to the spirit of art. 21(2) and read with art. 10(2) thereof.

In that case for the above reasons, the court held that it had no jurisdiction to grant an injunction in the circumstances asked for that would interfere with the first defendant's exercise of his discretion.

Second Issue

[22] Alternatively, as already determined by this court, the constitutional structure requires that the decision on the applicability of art. 14A of the PSC be discussed in the State Legislative Assembly. This is within its exclusive jurisdiction. In *The Speaker Of Dewan Undangan Negeri Of Sarawak Datuk Amar Mohamad Asfia Awang Nassar v. Ting Tiong Choon & Ors And Other Appeals* [2020] 3 CLJ 757; [2020] 4 MLJ 303, Abdul Rahman Sebli FCJ said:

> [81] *Lim Cho Hock v. Speaker, Perak State Legislative Assembly* [1979] 2 MLJ 85 is another case on point. In that case, the speaker applied to set aside the originating summons on the ground that the court had no jurisdiction to hear the assemblyman's application to, *inter alia*, declare an assemblyman's seat (who happened to be the speaker himself) vacant. In disallowing the claim, Eusoffe Abdoolcadeer J (as he then was) held:
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> > In the light of these constitutional provisions, it is clear that the two matters raised in these proceedings are for the Assembly to decide and within its exclusive jurisdiction, and not for the courts to determine. Under the *lex et consuetudo parliamenti*, the Assembly has control over its proceedings, procedure and members and may decide questions as to the qualifications and disqualifications. The provisions in the Federal and State Constitutions I have discussed crystallise and encapsulate this important principle of non-justiciability of its intra-mural activities in the courts which may perhaps be appropriately termed the *Bradlaugh* principle, highlighted in the *Bradlaugh v. Gosset* (1984) 12 (QBD) 271.

[23] After such decision is made, there is nothing prohibiting the plaintiff from challenging the said decision (no concession is made). However, in line with the doctrine of separation of powers, the Penang Constitution requires that such decision be first made.

[24] In this context, there are no serious questions to be tried and the appeals are frivolous. The Court of Appeal would be bound by the decisions of the Federal Court cited above. The plaintiff would in any event have the alternative remedy of challenging any decision made by the first defendant (no concession is made) (see *Pilecon Engineering Bhd v. Malayan Banking Bhd & Ors* [2012] 3 MLJ 100 at para. 648).

The Court's Findings

[25] In this case, in looking at the jurisdiction of the court, the fact that there is a limit to the power of this court to intervene needs to be seen and decided in line with the existing legal provisions. This court has the power to grant an injunction to prevent any authority from doing something that is against the law. This is to ensure there is a balance without one overpowering the other. This is called "check and balance". At the same time, this court should also be careful not to exceed the jurisdiction given.

[26] The plaintiff in this case have sought that this court use its discretion to prevent the duties of another body, namely the State Legislative Assembly which is also created under the State Constitution. The plaintiff's application is to prevent the jurisdiction of the defendants and will directly prevent them from exercising their legal powers which are expressly vested in their exclusive jurisdiction.

[27] This court cannot make any decision that will exceed the jurisdiction of this court. Any issue related to the eligibility or disqualification of a Member of State Assembly who has been elected through a valid election process is under the jurisdiction of the State Legislative Assembly as stated in the State Constitution. In this case, it is under art. 13 of the PSC. For this case, it involves art. 14A of the PSC which is the first defendant to make decisions. In short, applying the *ratio* in *Teng Chang Khim* (*supra*), the applicability of art. 14A of the PSC is within the exclusive jurisdiction of the first and second defendant and cannot be interfered with by the court. Even if the court can intervene, this can only be done and referred to the court after a decision is made by the first or second defendants. In the present case, no decision has been made by the defendants.

[28] In *Fan Yew Teng v. Government Of Malaysia* [1976] 1 LNS 28; [1976] 2 MLJ 262 where the applicant therein applied that the Dewan Rakyat desist from discussing his disqualification as a member of the House. The learned judge, Chang Min Tat J, (as he then was), quoted with approval SA de Smith in his "*Judicial Review of Administrative Action*" (3rd edn) at p. 418 where the learned author has this to say:

A The courts have no jurisdiction to restrain by injunction, or otherwise to pass upon, any conduct that forms part of proceedings in Parliament, even though the matter in issue is not directly connected with the process of legislation. In the well-known case of *Bradlaugh v. Gossett* (1884) 21 QBD 271, the court refused to award the plaintiff an injunction against the Serjeant-at-Arms to restrain him from enforcing an order of the House B of Commons requiring him to exclude the plaintiff from the House, or a declaration that the order of the House was void. Assuming that the plaintiff was right in his contention that the order of the House was based upon the misconstruction of a statute, nevertheless the courts had no jurisdiction to interfere, for the matter fell exclusively within the scope of the privilege of the House to regulate its own internal proceedings.

C It is to be noted that the case cited by the plaintiff's counsel – *McDonald v. Cain*'s case – itself throws some light on the question of jurisdiction where at page 419, Gavan Duffy J, after disagreeing with the learned Solicitor-General's submission therein that the court had no Jurisdiction, remarked:

D > There is no doubt that the courts will not interfere with the Council's management of its business within the four walls of Parliament even if it appears that some legal right has been interfered with.

E Then again at p. 436 therein FC O'Bryan J said:

> The Solicitor-General then relied upon *Bradlaugh v. Gossett* (1884) 21 QBD 271, and what was said by Lord Coleridge C.J., at pp. 272-3, and by Stephen J., at pp. 276-7. But in that case what was sought by the plaintiff was an order to declare that what had been done in the House itself ... This was held to be an invocation of the courts of law to control the F House of Commons in its internal procedure and proceedings – a thing which is plainly outside their jurisdiction. It is ancient and well-established law that what is said and done within the walls of Parliament cannot be inquired into in a court of law.

[29] In *Sakapp Commodities (M) Sdn Bhd v. Cecil Abraham* [1998] 4 CLJ 812; G [1998] 4 MLJ 651, this court reiterated the discretionary power of the court to grant declaratory reliefs and set out a variety of circumstances where declaratory relief may be denied in the exercise of this discretion as follows:

> Thus, generally speaking, the court will not grant a declaratory judgment where an adequate alternative remedy is available or upon hypothetical H issues or upon an issue of no practical consequence or where it may be premature to grant a declaration or where a plaintiff is guilty of laches or other inequitable conduct or where "clocked declaration", that is to say, a declaration for a collateral purpose or with an improper motive, is sought.

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[30] This court cannot grant an injunction against first and second defendants which has the effect of preventing the defendants from using the powers and jurisdiction provided to them under the PSC. The Federal Court in the case of *Teng Chang Khim* (*supra*) at p. 637 (CLJ); p. 574 held as follows:

> [23] Thus, there can be no doubt that the business of Parliament and State Legislative Assemblies are immune from judicial interference. The courts have no power to interfere with the internal management of Parliament or any State Legislative Assembly. This immunity arises from the doctrine of separation of powers between the three principal organs of government, namely, the executive, the legislature and the judiciary.

(see *Tun Dr Mahathir Mohamad & Ors v. Datuk Azhar Azizan Harun & Ors* [2021] 3 CLJ 852; [2021] 9 MLJ 224).

[31] In *M Kula Segaran & Satu Lagi lwn. Suruhanjaya Pilihan Raya Malaysia & Yang Lain* [2018] 5 CLJ 547:

> [29] Peguam Kanan Persekutuan selanjutnya berhujah bahawa sekiranya proses penyempadanan semula kawasan pilihan raya seperti disyorkan oleh SPR masih berterusan, apa-apa tindakan semakan kehakiman oleh mahkamah akan terjumlah kepada campur tangan mahkamah terhadap fungsi SPR seperti yang diperuntukkan dalam Perlembagaan Persekutuan. Dalam kes *See Chee How*, *supra*, mahkamah ini telah pun memberikan pandangan yang sama mengenai isu ini seperti berikut:
>
> > [64] Meaning must be given to the words "proposed recommendations" used in sections 4, 5 and 7 of the Thirteenth Schedule. These words connote the preliminary nature of the recommendations. *We agree with the Senior Federal Counsel that the delimitation exercise is a continuous process which is eventually to be decided by the House of Representatives. It is not the function of the court to conduct its own inquiry into the objections and come to its own decision. To do so would be to usurp the powers of the EC as provided under the Constitution*. (emphasis added)

[32] In *Tun Datu Hj Mustapha Datu Harun v. Legislative Assembly of State of Sabah & Ors* [1986] 2 MLJ 388:

> Where the Constitution itself had invested the 1st defendant with that discretion the court held that it was extremely improper that it should interfere by means of an injunction. Such an injunction would certainly run counter to the spirit of art. 21(2) and read with art. 10(2) thereof. For this reason, the court held that it had no jurisdiction to grant an injunction in the circumstances asked for that would interfere with the 1st defendant's exercise of his discretion.

[33] *Tun Datu Hj Mustapha Datu Harun v. Tun Datuk Hj Mohamed Adnan Robert, Yang Di-Pertua Negeri Sabah & Datuk Joseph Pairin Kitingan* [1986] 2 MLJ 391:

> Where the Constitution itself had invested the 1st defendant with that discretion the court held that it was extremely improper that it should interfere by means of an injunction. Such an injunction would certainly run counter to the spirit of art. 21(2) and read with art. 10(2) thereof. For this reason the court held that it had no jurisdiction to grant an injunction in the circumstances asked for that would interfere with the 1st defendant's exercise of his discretion.
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> If, however, the dismissal by the 1st defendant is the carrying out of the will of the Assembly the Court again will not interfere in a matter within the purview of the Assembly to decide. It therefore dismisses the applicant's application for an interim injunction on either ground.

[34] In *Fan Yew Teng* (*supra*), the court held that:

> On this construction, I must necessarily go on to hold that this court cannot interfere with the right of the Dewan to decide the question of the plaintiff becoming disqualified for membership or the corresponding right to the Dewan under the proviso to art. 53 to decide, if it be so minded, postponing taking a decision in order to allow for the appeal to be heard or for the plaintiff to make an application for pardon.
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> With respect, I am therefore of the opinion that the reliefs sought by the plaintiff are outside the jurisdiction of the court.

Second Issue

[35] For issues related to the *status quo*, the plaintiff is still an assemblyman until the decision is made by the defendants. Until the motion is made, debated and voted (approved and passed), his qualification and position are not affected. This issue of loss of membership will only exist after that process. After the decision, that decision can still be challenged in this court. The court can only consider the issue for the *status quo* of the plaintiff to be maintained or reinstate only if there is a decision that the *status quo* of all plaintiff has changed or been removed.

[36] The court also reiterated that the court cannot anticipate whether the *status quo* of all plaintiff will change. Although learned plaintiff counsel argued that taking into account the position of the majority of the Government's seats, it is certain that this motion will be approved or passed. Who can give certainty since it is an expectation whether it will definitely happen, or the possibility that it will not happen.

[37] In *Haris Fathillah Mohd Ibrahim v. Suruhanjaya Pilihanraya Malaysia* [2016] 10 CLJ 382:

> [36] In the often quoted case of *Sakapp Commodities (M) Sdn Bhd v. Cecil Abraham* [1998] 4 CLJ 812; [1998] 4 MLJ 661 *the court had laid down the principles for the court to exercise its discretion in granting declaratory reliefs, amongst*

others, generally the court will not grant a declaratory judgment where an adequate alternative remedy is available (see *Manggai v. Government of Sarawak & Anor* [1970] 1 LNS 80; [1970] 2 MLJ 41), *or a hypothetical case or an issue of no practical consequence* (see *Lim Kim Cheong v. Lee Johnson* [1993] 1 SLR 313 *or one which is premature* (see *Rediffusion (Hong Kong) Ltd v. Attorney General of Hong Kong* [1970] AC 1136). (emphasis added)

Other Issues

[38] This court has also evaluated all the issues that have been raised and there are the following issues that this court would like to examine.

(i) Issue Of Amendment Or Pending Appeal

[39] There is no need for this court to interpret otherwise because the Federal Court has already decided. Since the Federal Court has decided that art. 14A of the PSC is valid, therefore this court is bound by the decision. In the case of *Syed Iskandar Syed Jaafar v. Kerajaan Malaysia & Ors* [2023] 1 CLJ 642, held that:

[35] However, my problem is not in recognising the difficulty of the issues raised in question (ii). My problem is the effect of referring the question is to put this OS to an end. There is nothing further for me to deliberate and determine in the OS. The question of bringing the dispute to a speedy and economical end within the meaning of s. 84(2) of the CJA no longer arises.

[36] *In short, once the Federal Court answers question (ii), this OS will be finally determined. Although procedurally the matter is to be remitted to this court, practically, there is nothing to be deliberated anymore. I am bound by the doctrine of stare decisis, and once it is remitted to this court, for all intents and purposes, the rights of the parties in this OS would be finally decided once question (ii) is answered by the Federal Court*.

[37] The exercise of my discretion can only be made if the question, once answered by the Federal Court, would assist me in determining the main OS.

...

[44] *However, as I alluded to earlier, and based on the factual matrix and the nature of question (ii), once the Federal Court answered it, this OS would be finally disposed of. I am bound by the answer given by the Federal Court. Even if there is an appeal against my decision, the Court of Appeal too would be bound by the answer. The right of appeal would therefore be nugatory*. (emphasis added)

[40] In *Suruhanjaya Pilihan Raya Malaysia & Ors v. Kerajaan Negeri Selangor* [2018] 1 LNS 209:

[18] It is necessary to consider at this point the respondent's argument as the last remaining question in this judgment. For the respondent, learned counsel questions whether an interim order to set aside the stay order can be granted under section 44 of Act 91. The correct procedure, learned counsel submits, is to prosecute the appeal early. In my judgment, there

> is no legal impediment for this court to grant an interim order as prayed for in this motion pending the hearing of the appeal filed by the applicants. *The undisputed fact is that the respondent has obtained the stay after the decision is made against it. This has effectively stayed the judgement of the court against the respondent. Thus, a question which immediately arises following the stay order made by the learned judge is whether the said order can be granted in the first place when the application for the judicial review has been refused by the court. With the dismissal of its application, the respondent in truth is left with absolutely nothing to begin with. The respondent's position, viewed in the context of the trite legal position as clearly demonstrated above inhibiting any order that restrains the Commission from carrying out its function which it is mandatorily required to perform by the Federal Constitution, certainly would not justify the granting of such stay order. As it has been made, it is manifestly impossible to allow it to remain, such order calls for or immediately requires curial intervention even if it is interim in nature while the case is pending appeal. It would suffice for the purpose of dealing with this issue for me to hold that following the dismissal of the judicial review application, the position of the Commission so far as it concerns the exercise of its functions under the Federal Constitution remains unaffected as it would have been in if there is no judicial review application herein and the impugned order for stay. I would hold that it should remain that way until the disposal of the applicants' appeal. The status quo must be maintained and the Commission must be allowed to proceed to conduct local enquiries in Selangor unhindered until its completion. I do not think that anything material turns upon this argument.* The motion is in my opinion properly brought within the scope of section 44 of Act 91.
>
> (emphasis added)

(ii) The Issue Of Jurisdiction Should Be Raised From The Beginning

[41] In relation to the issue of jurisdiction, this court thinks it is a point of law and it can be raised at any level, because if it is not raised or there is no objection by both parties, it will not automatically give this court jurisdiction. The court did not agree with learned counsel for the plaintiff that this issue should have been raised from the very beginning before this matter was referred to the Federal Court. The issue referred to is related to the constitutional issue and not the issue of whether this court has the power to grant the *Erinford* injunction at this stage.

[42] This court agrees and is of the opinion, based on the law that has been decided that for issues related to jurisdiction, it is a legal issue that can be raised at any time. In *Pengusaha, Tempat Tahanan Perlindungan Kamunting, Taiping & Ors v. Badrul Zaman PS Md Zakariah* [2018] 8 CLJ 273; [2018] MLJU 1028, the court held that:

> [23] The new point of law raised for the first time by the appellants at the Court of Appeal in the instant case relates to the ouster clause provisions of subsection 8B(1) and section 8C of the ISA. It involves a question of jurisdiction of the courts. A new point of law on issue of jurisdiction was allowed to be taken for the first time at the appellate stage by the Court

of Appeal in *Luggage Distributors (M) Sdn Bhd* (*supra*). In that case, the Court of Appeal, speaking through Gopal Sri Ram JCA (later FCJ) made the following ruling (with which we agree): "*Similarly, justice would, in the usual way, favour the admission of a point that goes to the jurisdiction of the trial court because neither consent nor waiver may confer jurisdiction where none exists; and it is not in the interests of justice that a judgment of a court lacking jurisdiction should be permitted to stand*." (emphasis added)

Pronouncement

[43] The court must always give recognition to the doctrine of separation of powers. The court has no power to interfere with the internal management of Parliament or any State Legislative Assembly. This immunity arises from the doctrine of separation of powers between the three principal organs of government, namely, the Executive, the Legislative, and the Judiciary. If these three branches are left unchecked, there will be a clash that will destroy the doctrine of separation of powers which will affect the freedom of the three to act according to their respective jurisdiction.

[44] The plaintiff has failed to show that the *Erinford* injunction should be granted. The court hereby dismissed the plaintiff's application in encl. 90. After taking into account that this is a case of public interest, no costs to be awarded.